

**COURT OF APPEALS
DECISION
DATED AND RELEASED**

July 6, 1995

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See § 808.10 and RULE 809.62, STATS.

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

No. 94-1043

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT IV**

**IN THE MATTER OF THE ESTATE OF
MARY L. CODY, DECEASED:**

WILLIAM J. CODY, JR.,

Appellant,

v.

ESTATE OF MARY L. CODY,

Respondent.

APPEAL from an order of the circuit court for Crawford County:
MICHAEL KIRCHMAN, Judge. *Reversed and cause remanded.*

Before Eich, C.J., Dykman and Vergeront, JJ.

PER CURIAM. William Cody, Jr. (William, Jr.) appeals from an order in his mother's estate proceeding, effectively awarding ownership of certain disputed property to William, Jr.'s brother, Bryan Cody. The dispositive issue is whether willed property vests in the sole beneficiary of an estate, even

before it is formally transferred under the probate code, when the beneficiary is also the personal representative. Because we conclude that no exception to proper procedure exists in such cases, we reverse.

William Cody, Sr. (William, Sr.) died in January 1992. His will left all his property to his wife, Mary, and appointed her his personal representative. A subsequently prepared inventory of William, Sr.'s property omitted a significant portion of it. Mary died in September 1992 before the error was discovered, and William, Jr. succeeded her as personal representative.

William, Jr. argued that the omitted property was part of Mary's estate, distributable to her heirs, including him, under her will. The estate argued that the property should be excluded, because after William, Sr. died, Mary gave it to Bryan.¹

The trial court agreed with the estate and ordered the property excluded. Essential to the ruling was its conclusion that:

No written conveyance is required from the personal representative when the person who acts as the personal representative is the sole beneficiary. The personal representative can give away whatever rights that personal representative has in the assets while the estate is pending and there need be no formal conveyance or other formal action between the personal representative and the individual if they are one [and] the same person.

The rule in Wisconsin is that one claiming title to property derived from the estate of a deceased person must show that title came from the personal representative of the deceased in the "regular course of administration" of the estate. *Buttles v. DeBraun*, 116 Wis. 323, 327-28, 93 N.W. 5, 6 (1903). The

¹ The parties dispute the value of the property, with the estate assessing it at approximately \$44,000 and William, Jr. assessing it at around \$120,000.

status of sole heir is, by itself, insufficient. *Id.* at 328, 93 N.W. at 6. That rule contemplates no exceptions. We are bound by supreme court precedent. *Livesey v. Copps Corp.*, 90 Wis.2d 577, 581, 280 N.W.2d 339, 341 (Ct. App. 1979). So is the trial court despite its discretionary authority to provide a fair result in an equitable proceeding. *First Federated Sav. Bank v. McDonah*, 143 Wis.2d 429, 434, 422 N.W.2d 113, 115 (Ct. App. 1988). Because Mary, as the personal representative, never formally transferred title of the property to herself as the beneficiary, she was powerless to give it away.

We therefore reverse and remand for entry of an order including the disputed property in Mary's estate. Our decision makes it unnecessary to determine whether the trial court heard sufficient evidence to find that Mary gifted the property to Bryan.

By the Court.--Order reversed and cause remanded.

This opinion will not be published. See RULE 809.23(1)(b)5, STATS.